No. 225.

Brf. of Spalding for Appellee

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, *Appellant,*
vs.
WILLIAM T. EWING, *Appellee.*
} No. 225.

Appeal from the Court of Claims.

REPLY TO THE BRIEF FOR THE UNITED STATES FOR THE APPELLEE.

HARVEY SPALDING,
Attorney for Appellee.

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THE UNITED STATES, APPELLANT,

vs.

WILLIAM T. EWING.

APPEAL FROM THE COURT OF CLAIMS.

REPLY TO THE BRIEF FOR THE UNITED STATES FOR THE APPELLEE.

THE FACTS.

The brief for the United States presents no controversy as to the established facts.

Upon the application of William T. Ewing, who had been postmaster at Gadsden, Ala., during the four biennial terms between July 1, 1866, and July 1, 1874, to the Postmaster-General for readjustment and payment of an increased salary in each of said terms to which he believed himself entitled by the Statute of March 3, 1883 (c. 119, 22 Stat., 487), the Postmaster-General ascertained and stated his commission salary, and paid salary and unpaid commission salary in each of said terms as follows, to wit:

For the first biennial term (July 1, 1866, to July 1, 1868) commission salary, $531.90; paid salary, $146; unpaid commission salary, $385.90; for the second biennial term (July 1, 1868, to July 1, 1870,) commission salary $1,015; paid salary, $440; unpaid commission salary, $575; for the third biennial term (July 1, 1870, to July 1, 1872,) commission salary, $1,179.60; paid salary, $920; unpaid commission salary, $259.67; for the fourth biennial term (July 1, 1872, to July 1, 1874,) commission salary, $1,311.16; paid salary, $1,080; unpaid commission salary, $231.16; total unpaid commission salary for the four terms, $1,451.73.

Thereupon the Postmaster-General substituted Ewing's commission salary of $531.90 in the first term for his paid salary of $440 in the second term, and in this way paid him in the second term $91.90; and he substituted his commission salary of $1,015 in the second term for his paid salary of $920 in the third term, and thus paid him in the third term $95; and, as alleged, he undertook to substitute his commission salary of $1,179.67 in the third term for his paid salary of $1,080 in his fourth term, but, as claimed, could not lawfully do so because the paid salary of $1,080 in the fourth term was but $99.67 less than the commission salary of $1,179.67 in the third term.

It is publicly known that there was a contention of a multitude of postmasters for additional compensation, which contention was created by the reduction of their compensation 10 per cent. or more below the compensation prescribed by the statute on June 22, 1854 (10 Stat., c. 61, p. 298), by the Postmaster-General on his own responsibility in the administration of the statute of July 1, 1864 (13 Stat., c. 197, p. 335). This contention originated before the end of the first biennial term after the statute of July 1, 1864, was enacted and in response to the complaints of the postmasters and as a remedy therefor Congress enacted the statute of June 12, 1866 (14 Stat., c. 114, p. 60, sec. 8). The Postmaster-General exercised authority under the statute of June 12, 1866, to pay the deficiencies in compensation of postmasters for past terms of service, but he treated the statute as not mandatory upon him to do so. In illustration of the exercise by the Postmaster-General of authority to pay deficiencies under the Act of 1866 to postmasters for past terms of service, the following cases are cited. He paid to J. H. Harper, postmaster at Jackson, Tenn., for a deficiency in his compensation in the term ended June 30, 1868, $1,650. He paid a deficiency of $356.67 in the compensation of Charles T. Wheaton, postmaster at Pleasonton, Kans., in the term ended June 30, 1870. He paid to J. Frank McDowell, postmaster at Columbus, Kans., prior to June 30, 1872, a deficiency in his compensation prior to that date of $464.49, and he paid to O. S. McDowell, postmaster at the same place, a deficiency in his compensation of $156.75. To Frank Danford, postmaster at Girard, Kans., he paid a deficiency of $405 in his compensation which occurred prior to July 1, 1872, and he paid to George Ryan, Frank Danford's successor in office, a deficiency in his compensation of about $175. He paid to A. W. Toucey, postmaster at Winfield, Kans., a deficiency of $620 which occurred in his compensation prior to July 1, 1872. He paid a deficiency in the compensation of J. C. Warner, who was postmaster at Bunker Hill, Kans., of $244 which occurred prior to July 1, 1874. He paid a deficiency which occurred in the compensation of Albert Ames, postmaster at Kendall, Mich., of $158 in the term prior to July 1, 1872. In 1875 he paid deficiencies in compensation to a great many postmasters which occurred prior to July 1, 1874, aggregating $300,000.

It is a strange fact, however, that the Postmaster-General, after the enactment of the statute of 1866, continued to decrease by his administration of the statute of July 1, 1864, the compensation of postmasters to such an extent that a great mass of postmasters were aroused and asserted claims for the restoration of the compensation taken from them by the Postmaster-General. Congress repealed the statute of 1864 under which the Postmaster-General on his own responsibility decreased the compensation of postmasters by wholesale. And as a final remedy for the complaints of wrongs suffered by the postmasters, Congress enacted the statute of March 3, 1883 (22 Stat., c. 119, 487).

Postmaster-General Gresham took up the subject of carrying into effect the statute of March 3, 1883, enacted by Congress to settle and put an end to a controversy which began before July 1, 1866, and continued till this statute was enacted. He gave full and faithful consideration to the subject and to an opinion of the Attorney-General, and on February 17, 1884, he published throughout the United States the statute of 1883 to be a contract for the payment of all deficiencies of 10 per cent. or more in the compensation of postmasters of the three classes named in the statute, by restating their salaries on the basis of the Act of 1854 upon the eight quarterly returns of each biennial term.

This final authorative order of the Postmaster-General is printed in the record at the bottom of page 11 and is in the following words:

"WASHINGTON, D. C., *Feb. 17, 1884.*

"The Attorney General has rendered an opinion in regard to the construction of the Act of March 3, 1883, relative to the readjustment of postmasters' salaries. He holds that in all cases in which it appears from the biennial adjustment of salaries of postmasters of the third, fourth and fifth classes that they receive ten per cent. or more less than they would have received in commissions under the Act of 1854, they are now entitled under the Act of March 3, 1883, to the difference between what was paid them and what they would receive as commissions under the Act of 1854. He also holds that it is not the intention of Congress, by the Acts of 1864 and 1866, to dispense with the biennial adjustments. It follows that a claimant, under the Act of March 3, 1883, must show that the acts subsequent to 1854 deprived him of 10 per cent. or more of what he should have received if those statutes had not been enacted, and he had been compensated on the basis of the Act of 1854. The opinion of the Attorney-General is in harmony with the construction of those statutes by the Department."

The contention of the postmasters, through many years, to recover the compensation of 10 per cent. or more which they lost by the administration of the statute of July 1, 1864, by the Postmaster-General, constituted the sole reason for the enactment of the statute of March 3, 1883, and this was perfectly known to the Postmaster-

General when, on February 17, 1884, he published throughout the United States the requirement of that law.

THE CONTENTION OF THE POSTMASTER-GENERAL AGAINST THE STATUTE OF 1883 AFTER GENERAL GRESHAM LEFT OFFICE.

The resistance by the Postmaster-General of the statute of 1883, after General Gresham left office, was by substituting under cover the salary of one term for the salary of the next term. This substitution went under the name of a prospective adjustment. Manifestly there never existed any law providing for a prospective adjustment of a salary at a post office except the authority contained in the Act of July 1, 1864. The requirement of that statute prohibited any readjustment of a postmaster's paid salary, and there can be no readjustment or change by increase of a paid salary of a postmaster except by authority of a statute which makes provisions for payment of such increased salaries. Any such law must of necessity be supplementary to the statute of July 1, 1864, because that law authorized only assignments of salaries at post offices at the beginning of every biennial term and a reassignment as often as was necessary during the term ensuing in order that the postmaster serving in the term should neither be underpaid nor overpaid in any material sense when tested by the statute of 1854, which forms the basis of the salary act of July 1, 1864. Consequently, the substitution of a salary in a past term for the salary in another past term is not only without the authority of any statute, but it is contrary to reason and to justice and it involves a double fraud by the underpayment of the postmaster in the term in which the smaller salary of the prior term is substituted for the postmaster's larger salary in the succeeding term, and it operates as a fraud upon the United States by overpayments in that great number of cases in which by decrease of receipts the salaries are smaller in succeeding terms than are the salaries in the prior terms.

No such thing as the substitution of a salary in one term in the past for the salary of another term in the past was ever known or suggested until after February 17, 1884. It was set on foot in the seclusion of the Department about the time that Mr. Hatton succeeded Postmaster-General Gresham, who left office on the 14th of October, 1884. The method by which it was done is interesting. The order of General Gresham of February 17, 1884, defining and elucidating the statute of March 3, 1883, was kept in seclusion. After it had been set on foot authority for it was officially attributed to General Gresham in defiance of his plain declaration of the requirement of the law of the date mentioned.

His authority for the creation of these ficticious salaries was assumed in the report of the Postmaster-General of November 21, 1885, to exist. The following is an extract from that report: "After the passage of the Readjustment Act of 1883 Postmaster-General Gresham, himself a jurist of high rank, decided, substan-

tially, that its correct interpretation requires of the Department simply to review the salaries in question and proceed *biennially* to readjust them prospectively, in those cases in which it failed of being done, in the same manner and upon the same rules by which the adjustment should have been made from time to time under authority of the former laws."

This report ignores the fact that a biennial readjustment of salaries, so called—that is, a reassignment of salaries biennially at the beginning of biennnial terms, was originally made under the statute of July 1, 1864, at every post office in the United States. No case was omitted. It was not possible after 1883 to make any assignment at any post office in the United States of any salary "In the same manner and upon the same rules by which the adjustment should have been made from time to time under authority of the former laws." Every assignment of a salary under the Act of July 1, 1864, at a post office at the beginning of a biennial term was by that law subjected to the control of the Postmaster-General, to be changed by him during the term as frequently as he saw fit to do so. No power can restore the conditions surrounding every assignment of salary at post offices under the Act of July 1, 1864. Such conditions are absolutely lost in the past.

The war upon the statute of 1883, inaugurated about the time General Gresham left office, was carried on by officially reporting that it was by the authority of General Gresham. But at the same time Congress was made to believe that the readjustments, so called, by substitution were in fact readjustments of salaries made in compliance with the law as it was publicly declared to be by General Gresham. As is well known, the substitution of one postmaster's salary for another postmaster's salary in another term sets at absolute defiance the question as to whether the paid salary of the postmaster in either term is 10 per cent. or more less than his salary by commissions. By the annual report of the Postmaster-General Congress was made to believe that salaries were allowed in no case unless the paid salaries were found to be 10 per cent. less than the commissions.

The following is an extract from the annual report of the Postmaster-General of November 26, 1887, from page 364 of that report:

"Review of salaries of postmasters of the third, fourth, and fifth classes, under the act of March 3, 1883." * * *

"Fifty-four thousand four hundred and fifty-three claims have been reviewed, and 21,573 have been allowed; 32,880 were found to be *below the 10 per cent. requirement of the law*, or for periods outside the date defined by the act." * * *

The following are extracts from the annual report of the Postmaster-General of November 28, 1888, from page 82 of that report:

"Review of salaries of postmasters of the third, fourth and fifth classes under the Act of Mar. 3, 1883." * * *

"The number of claims reviewed was 68,725. Of this number 26,238 claims have been allowed, and 42,487 claims were found

below the 10% requirement of the law or for periods outside the dates defined by the act." * * *

Here are representations made to Congress, in effect, that the deficiency described in the statute of 1883, and General Gresham's order of February 17, 1884, controlled and measured every claim allowed and that in the cases disallowed there was no deficiency. The record facts in the Department are that every allowance made was made regardless of whether there was any deficiency or not, and that thousands of the so-called disallowed claims had been stated and exhibited deficiencies in the paid salaries ranging from 10 to 75%.

Plainly the purposes intended by substituting the salaries of postmasters in specified past terms for the salaries of postmasters in the terms succeeding those specified are the results reached by this means.

When the measure which became a law on March 3, 1883, was pending before Congress the Postmaster-General on January 24, 1882, in House Executive Document, number 35, 47th Congress, first session, made the following report to Congress (top of page 4) upon that measure: "It is difficult to approximate the exact sum covered by claims which would be presented under the present bill if it became a law, but from the best data available it will not be less than from four to five million dollars."

The data the Department had upon the subject was a full record, the examination of which would necessarily show the aggregate reduction of the compensation of postmasters by the Postmaster-General between July 1, 1864, and July 1, 1874, in those cases in which the reduction exceeded 10 per cent.

On November 27, 1889, on page 36 of his annual report, the Postmaster-General notified Congress as follows: "The review of salaries of postmasters of the third, fourth, and fifth classes, under the Act of March 3, 1883, has been completed, and appropriations to pay claims thereunder have been made by Congress to the aggregate of $1,221,350."

The Postmaster-General through the Solicitor-General a few months ago in the motion to advance this case represented that the pending case, which is in its own terms a claim for the difference between the compensation paid a postmaster and what would have been paid him upon the basis of the statute of 1854, and which consequently represents every claim ever asserted by postmasters for additional compensation and every claim payable as a debt due under the Act of 1883, as that act was publicly defined by the Postmaster-General, as a test case involves about $4,000,000.

According to these reports the Postmaster-General, by the substitution system described herein, has defeated the payment of the great mass of the debts ordered paid by the statute of 1883. Manifestly it was impossible for him to scale down an aggregate of $4,000,000 to an aggregate of $1,221,350. It thus appears that the $1,221,350 applies to and covers a distinct class of claims, separate

from and apart from the debts due under the statute of 1883, and that this separate class of claims have been invoked in antagonism to the debts ordered paid by the statute of 1883. Recourse seems to have been had through this class of claims, which were wholly unknown until about the time General Gresham left office, in order to defeat the payment of the claims reported upon by the Postmaster-General to Congress on January 22, 1882, and again reported upon and accurately described by the Postmaster-General on February 17, 1884.

CONTENTION OF THE POSTMASTER-GENERAL AS NOW PRESENTED.

As is shown by the case before the Court, the Postmaster-General affirms in substance that whenever the salary paid a postmaster belonging to either the third, fourth or fifth classes, in any biennial term between July 1, 1864, and July 1, 1874, is 10 per cent. or more less than the commissions of the postmaster in the term prior the excess of the commissions of the postmaster in the term prior over the paid salary of the postmaster in the succeeding term is a debt of the United States due and payable to the postmaster in the succeeding term.

If this contention is well founded, every one of the 28,617 postmasters of these classes who, between July 1, 1864, and July 1, 1866, was paid a salary 10 per cent. or more less than the commissions at his office between July 1, 1862, and July 1, 1864, must be paid the difference between his paid salary and the commissions two years prior.

And every one of the 23,554 of these classes of postmasters who was paid a salary between July 1, 1866, and July 1, 1868, 10 per cent. or more less than the commisions at his office between July 1, 1864, and July 1, 1866, must be paid the difference between the paid salary and the commissions described. And every one of the 26,081 postmasters of these classes who was paid a salary between July 1, 1868, and July 1, 1870, 10 per cent. or more less than the commissions at his office in the two years between July 1, 1866, and July 1, 1868, must be paid the difference between his paid salary and the commissions described. And every one of the 27,970 postmasters of these classes whose paid salary between July 1, 1870, and July 1, 1872, is 10 per cent. or more less than the commissions at his office during the two years between July 1, 1868, and July 1, 1870, must be paid the difference between his paid salary and the commissions described. And every one of the 31,303 of these classes of postmasters who was paid a salary between July 1, 1872, and July 1, 1874, 10 per cent. or more less than the commissions at his office between July 1, 1870, and July 1, 1872, must be paid the difference between his paid salary and the commissions described. These payments must be made in all the cases described in which an application was made to the Postmaster-General prior to January 1, 1887.

If the Postmaster-General believes this so-called construction of

the law warranted by law there was a very broad field of action confronting him before his contention was brought before this Court by an appeal of this case from the Court of Claims.

Many written requests were addressed to him some years ago to report for payment some thousands of such cases, which he had theretofore failed to report, and which accrued in each of the four biennial terms between July 1, 1866, and July 1, 1874. If his contention is well founded each of these thousands of cases is a debt of the United States ordered by statute to be paid.

Appendix A is an illustration of the numerous calls made upon the Postmaster-General to report the cases for payment which he contends in this Court are debts ordered paid by statutes. Disregarding his contention here he turned a deaf ear to all of these calls made upon him.

The executive documents in which he has reported for payment a part of these peculiar cases show that of the thousands of such cases originating in the biennial term between July 1, 1864, and July 1, 1866, he has never permitted the report or payment of a single case.

In the next term between July 1, 1866, and July 1, 1868, out of an aggregate of these peculiar cases estimated at $823,374 (top of page 27 of my brief of April 26, 1901), he has reported and paid 9,599 cases aggregating $542,241.15. Of these cases, in the term between July 1, 1866, and July 1, 1868, there remain unreported and unpaid an estimated aggregate of $281,132.85. The aggregate of such cases reported and paid in the three terms between July 1, 1868, and July 1, 1874, is $679,108.15. If the unpaid cases in these three terms are estimated by the proportion of unpaid to paid cases between 1866 and 1868, the unreported and unpaid claims of this peculiar class between July 1, 1866, and July 1, 1874, aggregate about $645,814.30. If the aggregate of the unreported cases between July 1, 1864, and July 1, 1866, be estimated by the aggregate of the actual paid cases in the succeeding term, namely, $542,241.15, the grand total of the unreported and unpaid cases of this peculiar class may be stated to be $1,188,055.45. The Executive Documents, which show no payments of these peculiar cases between July 1, 1864, and July 1, 1866, and other payments as herein given, are as follows:

House Ex. Doc., No. 153, 48th Congress, 2d Session; House Ex. Doc., No. 70, 49th Congress, 1st Session; House Ex. Doc., No. 225, 49th Congress, 1st Session; House Ex. Doc., No. 294, 49th Congress, 1st Session; House Ex. Docs., Nos. 31 and 32, 50th Congress, 1st Session; Senate Ex. Doc., No. 253, 50th Congress, 1st Session.

The grand result of the contention of the Postmaster-General may consequently be assumed to be this: First: It denies the payment of all the claims of postmasters for additional compensation asserted continuously from a beginning in 1866 down to the period when Postmaster-General Gresham defined such claims and declared that the statute of 1883 provided for the payment of the same. Second:

It attempts to validate a great mass of bounty claims to other postmasters which were first created by this contention, which contention was originated in the seclusion of the Post Office Department about the time General Gresham left office, and which contention has since then lived in seclusion in that Department by defeating an adjudication by the courts. When the Court of Claims in this one case was able finally to exercise jurisdiction, this contention first came out into the open, and it is now before this Court for final adjudication.

The class of cases which the Postmaster-General, by his contention pays, are fully illustrated by the cases cited in my brief of April 26, 1901, on page 11, and on page 10 of that brief is an illustration of the method of denial of payment of the debts due postmasters.

The method of denial of payment of these debts, and the method of substituting therefor the payment of bounties to other postmasters is shown by one supposed case, to wit: A was postmaster at a post office during the two terms between July 1, 1864, and July 1, 1868, and he was succeeded in the third term (July 1, 1868, to July 1, 1870) by B. In the first term A's commissions and his paid salary were equal, each having amounted to $1,000. Upon A's commissions in this term of $1,000 a salary was assigned at his office on July 1, 1866, for the term ensuing of $1,000, but his receipts increased so rapidly that in his second term his commissions amounted to $2,000, but he was paid only $1,000. The office receipts fell off so rapidly that in the third term when B was postmaster they amounted to only $1,000, and the Postmaster-General by timely and frequent reassignment of salary during B's term, authorized thereto by the second section of the statute of July 1, 1864, and by postal regulations, sections 474, 475, and 476, prevented any overpayment of compensation to B so that for the whole term of B his salary was $1,000, and his commissions were $1,000. The Postmaster-General considered these cases under the statute of March 3, 1883, and applying his contention in place of the law, denied payment of any part of the $1,000 deficiency in A's compensation in the second term, this by substituting the commissions of $1,000 in A's first term for his $2,000 commissions in his second term, and he paid B a bounty of $1,000 in his term of service by substituting A's commissions of $2,000 in the second term for B's commissions of $1,000 in the third term.

This contention, if successful in this Court, will accomplish the denial of payment of deficiencies in the compensation of postmasters aggregating $2,500,000, claims for which are now pending in the Court of Claims, and it will accomplish the payment of bounties to other postmasters the aggregate of which is estimated at $2,000,000.

Such is the issue brought to this Court for final determination at the instance of the Postmaster-General.

Consideration of the Statutes.

To uphold and enforce the contention of the Postmaster-General four statutes are invoked in the brief for the United States:

First. The statute of June 22, 1854 (10 Stat., c. 61, p. 298).

Second. The statute of July 1, 1864 (13 Stat., c. 197, p. 335).

Third. The statute of June 12, 1866 (14 Stat., c. 114, p. 60, sec. 8).

Fourth. The statute of March 3, 1883 (22 Stat., c. 119, p. 487).

As to the statutes compensating postmasters in force during 90 out of the 100 years in which postmasters have served the United States, it is simply impossible to create any doubt or uncertainty as to the intent and meaning thereof. These statutes were always framed in the plainest language, so that every postmaster without liability to err could pay himself out of the office receipts, authorized thereto by law. No hindrance could be interposed to such self-payment by the Postmaster-General. This describes all such statutes in force prior to July 1, 1864, and after July 1, 1874.

Under such circumstances and conditions it might be supposed to be impossible to misinterpret the statute of July 1, 1864, the statute of June 12, 1866, or the statute of March 3, 1883, each and all of which statutes in terms referred back to the statute of 1854, which in its own terms makes impossible any error as to its intent.

To exclude from consideration the statute of 1854 in discussing the three succeeding statutes mentioned is in effect to exclude the sole statutory foundation upon which the three later statutes were constructed.

The statute of 1854 presents eight separate varying units of compensation in each biennial term, the amount of each unit being dependent upon and determined by the receipts of each quarter. By the Act of 1864 the total of these eight units was made to determine the compensation to be assigned to the post office at the beginning of the next two years. The condition of each of these assignments, intended by the lawmakers, was the continuance of receipts during the two years ensuing substantially the same as the receipts in the two years prior.

Assuming a continuance in a great number of cases of the volume of receipts without material change, the Postmaster-General, in his administration of the statute of July 1, 1864, would assign salaries at such post offices substantially the same as the postmasters would receive if paid under the Act of 1854, and such compensation would neither be materially decreased below the standard of the statute of 1854, nor materially increased above that standard. To meet the requirement of the statute of 1854 as a measure of compensation of postmasters in the administration of the statute of 1864 in all those cases of receipts greatly varying in amount, before or after the assignment at the beginning of the term, authority was given to the Postmaster-General in the second section of the statute to change the salary during the term into as many varying units as was necessary to

prevent overpayment or under payment of the postmaster, tested by the standard of the statute of 1854.

Congress did not by the statute of 1864 decrease the compensation of postmasters below the standard of 1854, but on the contrary made it the duty of the Postmaster-General in the administration of the statute of 1864 to continue and maintain in the form of salaries the compensation of postmasters on the basis of the statute of 1854. The Postmaster-General by postal regulations assured Congress and the postmasters that this was the intent of the statute of 1864, and that it would be carried into effect in his administration of the law. Plainly the Postmaster-General and not Congress was responsible for the great cut he made in the compensation of postmasters by which it is said that he reduced their compensation $4,000,000. Every act of the Postmaster-General by which this was done was a reprehensible act. In its very beginning it brought out the emphatic protests of Congress and the postmasters. But the Postmaster-General had the advantage of both Congress and the postmasters because the statute of 1864 was so framed that no postmaster could receive a dollar of pay beyond the sum ordered paid by him, and when he had accomplished reductions in pay, by omitting the reassignments of salaries provided for, the amount of the reductions could not be recovered by the postmasters, because in terms the statute of 1864 prohibited any readjustment of a postmaster's salary. The word "readjustment" is here used in its proper sense, meaning as it does a change by increase of a deficient paid salary of a postmaster in a term ended. As the statute of July 1, 1864, stood, there could be no possible remedy in any such case except by and through a remedial statute which should authorize the Postmaster-General to readjust the paid salary of the postmasters in such cases of deficiency at the end of the term in which the deficiency appeared. This was the only possible remedy so long as the statute of July 1, 1864, remained in force.

It was under these circumstances and conditions that Congress enacted the remedial statute of June 12, 1866, section 8.

Upon the face of this statute considered together with the statute of July 1, 1864, and considering the terms of each statute, it is manifest that the statute of 1866 did not and could not authorize a single assignment or reassignment of a salary at any post office not provided for and authorized by the statute of 1864. The statute of 1864 authorized and secured an assignment of salary at every post-office in the United States at the beginning of every biennial term. All these assignments appear in the Official Registers. That statute also authorized reassignments of salaries at the beginning of each quarter within the term if the Postmaster-General saw fit to so act.

Manifestly every statement made that the statute of 1866 provided for an assignment of salaries for future terms refutes itself.

There would seem to be no alternative. The statute of 1866, an important remedial statute, must be transformed into an absolute nullity, or it must be conceded that it authorized at the end of a

term the return of the compensation of which the postmaster was deprived during the term, by the administration by the Postmaster-General of the statute of July 1, 1864.

Although the terms of the statute of 1866 and the sole reason of its enactment show that its only intent and purpose was to authorize and secure the return of the compensation of postmasters at the end of biennial terms which was lost by the assignment of salaries at post offices for future terms, in the administration of the statute of July 1, 1864, yet this statute has always been regarded and treated by the Postmaster-General as not mandatory upon him, but he has exercised authority to make such returns of lost compensation.

On June 9, 1883, following the enactment of the statute of March 3, 1883, the Postmaster-General made public his construction of the statute of 1866 in the following words after quoting the statute:

"There is no attempt in this section to change the settled rule of biennial readjustments. It requires simply that when the quarterly returns at offices of the third, fourth and fifth class show that the salary allowed upon the average annual compensation of postmasters for the two next preceding years is 10 per cent. less than it would be on the basis of the Act of 1854 (which basis is the actual quarterly returns themselves), then the Postmaster-General shall adjust upon the quarterly returns.

"The substitution of a salary for two years by the Act of July 1, 1864, based upon the average returns for two years, in place of commissions upon each quarterly return, was not abandoned by the amendment, but it was provided that where the effect of taking the average of annual compensation of postmasters for the two years preceding was to reduce the compensation of the postmasters 10 per cent. below what it would be by using the eight preceding quarterly returns themselves as a basis, the postmaster at such office belonging either to the third, fourth or fifth class, should have the adjustment upon the actual quarterly returns.

"This construction leaves in full force the policy inaugurated by the Act of July 1, 1864, of paying salaries to postmasters which are fixed for a period of two years in advance, the amendment simply providing that all postmasters of the third, fourth and fifth class whose compensation was thus reduced 10 per cent. or more below what they would have received under the Act of 1854 shall have their salaries readjusted and fixed upon the basis of the latter act." * * * "It was not the intention of Congress by the amendment of 1866 to repeal any part of the statute of 1854. The latter statute was to stand, the amendment simply securing to officers of the designated classes the right to have their biennial adjustment of salary made upon the basis of the Act of 1854 instead of the Act of 1864 whenever they could save 10 per cent. by this course.

"If, in fact, there are cases in which it appeared from the quarterly returns, or from sworn reports of receipts and business, that postmasters of the third, fourth and fifth class, at the biennial readjustment, had their salaries fixed under the Act of 1864, when

by an adjustment under the Act of 1854 10 per cent. or more would have been added to their salaries, then, under the Act of 1883, such postmasters are entitled to whatever additional sum they would and should have received under the Act of 1854."

This construction of the statute of 1866 is in the record of this case on pages 10 and 11. It is the only construction of the statute of 1866 promulgated by the Postmaster-General, and refutes absolutely every statement made in support of the contention of the Postmaster-General before this Court as to the construction of that act by the Postmaster-General. It presents the one and only mode for the readjustment of postmaster's salaries which can be attributed to that statute. When the law makers in the statute of March 3, 1883, directed the Postmaster-General to readjust the salaries of postmasters "in accordance with the mode presented in section 8 of the Act of June 12, 1866," the mode intended by Congress in that act was the mode and the only mode officially promulgated by the Postmaster-General as the mode presented by the statute of 1866. Under these conditions it would seem to be impossible to deny that this is the plain meaning of the phrase referred to in the statute of March 3, 1883. Beyond all doubt this is the one and only meaning in the mind of Congress when the statute of 1883 was enacted. And this public construction by the Postmaster-General of the statute of 1866 settles the meaning of the other phrase in the statute of 1883, directing the readjustment to be made of salaries in all cases where such salaries "have not heretofore been readjusted under the terms of section 8 of the Act of June 12, 1866." No salary could be readjusted under the Act of 1866 without removing by the readjustment the deficiency in the paid salary. If that deficiency remained when the Act of 1883 was passed, its removal was ordered by the statute of 1883, if the postmaster made application for its removal.

The brief for the United States in support of the contention of the Postmaster-General seems to rely mainly upon the assumption that the statute of 1866 presented no mode for the readjustment of salaries of postmasters. Plainly, no readjustment of a postmaster's salary is possible except by changing the paid salary of a past term by increase so as to equal the compensation prescribed by the statute of 1854. The brief is understood to deny that any such change of salary was authorized by the statute of 1866, and it is understood to affirm that it authorized only assignments of salaries at the beginning of biennial terms for the terms ensuing. This argument necessarily assumes that the statute of 1866 is an absolute nullity, because the prior statute of July 1, 1864, contained the identical authority attributed to the latter statute of 1866. The argument is manifestly absurd.

But support of this argument is sought by citing the decision of this Court in the McLean case, 95 U. S., p. 763.

That case was decisively determined by this Court against McLean upon the one question of law, namely, "that after a salary

of a postmaster has been fixed a readjustment by the Postmaster-General must be made before it can be increased."

That decision of this Court was decisive against McLean and the question as to whether the statute of 1866 repeated the authority contained in the statute of July 1, 1864, to make assignments of salaries at post offices for future terms, could not and did not, as it would seem, affect the decision of the Court. The Court added these words to the decision which was decisive of the McLean case, namely, "and the readjustment takes effect in all cases prospectably."

Whether the Court, in using these words, had in mind the statute of 1866 or only the statute of 1864 does not appear. Applied to the statute of 1864, the remark was undoubtedly without error, but as stated, applied to the statute of 1866, it would convert an important remedial statute into an absolute nullity.

In the case of the U. S. *ex rel.* McLean *vs.* William F. Vilas, Postmaster-General, in 124 U. S., pp. 86–97, the statutes of 1864, 1866 and 1883 were discussed with regard to their requirement as to salaries of postmasters, and this Court decided a question of law which was decisive of that case as follows, viz, "Upon a very careful examination of these statutes we are forced to the conclusion that the legislature in these enactments did not contemplate a readjustment of the salaries of any of these officers oftener than once in two years as a legal duty or obligation upon the part of the Postmaster-General."

Thus this Court has determined that the action required of the Postmaster-General by the statute of 1866 is action once in two years only. To affirm that the action required by this statute once in two years is the assignment at the beginning of biennial terms of salaries at post offices is to transform a statute enacted as a remedy for wrong into a nullity. To affirm that the action required of the Postmaster-General by the statute of 1866 is the readjustment of a deficient salary of a postmaster in a term of two years, at the expiration of the two years, is to give full and complete effect to that statute, as did the Postmaster-General in his public construction of that statute on June 9, 1883.

No argument in this Court in support of the contention of the Postmaster-General can be based upon the assumption that the statute of 1866 was rendered null and void by executive or judicial action. When in 1883 in the statute of that date Congress referred back to the remedial statute of 1866 reference was made to a statute by which Congress originally gave authority to restore to postmasters that part of their compensation of 10 per cent. or more, which was lost in biennial terms of service in the assignment of salaries for future terms by the Postmaster-General, authorized thereto by the statute of 1864. The mode presented by Congress in that statute for carrying into effect the prescribed remedy can neither be ignored by the executive or by the courts. When Congress passed the statute of 1883, if there had been before that any ground for doubt as to the intent and meaning of the statute of 1866, it was

removed by the statute of 1883, for in 1883 an order of Congress to readjust salaries of postmasters between July 1, 1864, and July 1, 1874, cannot be misconstrued by the executive or the court. There is but one possible construction to an order of Congress enacted under such conditions. The primary condition was that the statute of 1866 by which the Postmaster-General was authorized to restore compensation taken from postmasters had not been complied with, for it had been treated by the Postmaster-General as not mandatory upon him, and he had only restored compensation in such cases when he elected to do so. The fact that the order of 1883 referred back to terms of service of postmasters between 1864 and 1874 is absolutely conclusive of its intent, independent of the light derived from the statute of 1866 upon the subject. The order of 1883 made it obligatory upon the Postmaster-General to state the account of each postmaster within the terms of that act on the eight returns included within the biennial term in which the paid salary was 10 per cent. or more less than the amount of the commissions. No other account could be stated by authority of that statute, and referring back to the statute of 1866 and to the terms of the statute of 1883 every such readjustment and increase of salary of a postmaster could only be made as of the date of the close of the term. No action could be taken on a part of the eight returns at the beginning of the term or later, and only action is authorized by the statute upon all the returns, and this could not be had until the close of the term.

Congress in 1866 had the undoubted power to order the change by increase of certain deficient salaries of postmasters, and by proviso or otherwise to embody that order in any part of the statute of 1864. The fact that without the incorporation of this proviso in section 2 of the statute of 1864, that statute provided for and authorized only the assignment and reassignment of salaries at post offices for future terms, cannot be invoked to render nugatory the order of Congress contained in the statute. The statute of 1864 with the amendment of 1866 gave the Postmaster-General authority to establish for future terms salaries at all post offices. While this authority referred back to the statute of 1854 as the proper measure of the salary to be assigned and reassigned, there was no superior authority embodied in the statute by which the action of the Postmaster-General could be controlled. Upon the enactment of the amendment of 1866 he had authority to correct by increase of compensation, at the end of each term, for the term ending, the loss of compensation of 10 per cent. or more caused by the assignment of salaries for future terms. In considering the mode of readjusting postmasters' salaries presented by the statute of 1866 it is unnecessary to discuss the question as to whether compliance with that statute was mandatory upon the part of the Postmaster-General. It is believed to be undeniable that the Postmaster-General had authority to make such readjustments under that statute.

The argument in the brief for the Government in support of the

contention of the Postmaster General, after assuming that the statute of 1866 provided for the same so-called readjustments of salaries which were authorized by the statute of 1864, seems to base the final argument in support of that contention upon the words in the body of the statute of 1883 which read as follows: "and to date from the beginning of the quarter succeeding that in which such sworn returns of receipts and business or quarterly returns were made."

So far as the argument based on these words can be understood, it seems to be affirmed that they deny any readjustment of a postmaster's salary in a term in which the paid salary is 10 per cent. or more less than the commissions of the postmaster in that term, and carry forward to the postmaster in the next term for his benefit the readjusted salary of the postmaster in the prior term. This result can only be accomplished by ignoring and setting aside the basis upon which the statute is constructed, namely, the existence of a deficiency in the paid salary of the postmaster in the first term, and in like manner ignoring wholly whether there is any deficiency in the salary of the postmaster to whom the readjusted salary in the first term is transferred. This argument is in support of a complete subversion of the statutes.

When Congress enacted the remedial statute of March 3, 1883, that body had the right and the power to determine for itself and to so state at what date the increased salary or right accrued to the postmaster. In this determination that body ruled that in case of every deficiency described, the postmaster had a right under the statute of 1866 to the increased salary immediately following the close of the term in which the deficiency occurred. No other effect can be given to the quoted words, without transforming bounties of postmasters aggregating $2,000,000 into debts due and payable under the statute which limits such payments to deficiencies in the compensation of postmasters described in the statutes. And if these results are reached by such an argument, every construction of the statute of 1883 made public by the Postmaster-General will be set at defiance.

CONSTRUCTION AND EFFECT TO BE GIVEN THE STATUTES CITED.

"In construing a statute, aid may be derived from attention to the state of things as it appeared to the legislature when the statute was enacted." (Platt *vs.* Union Pacific R. R. Co., 99 U. S., 48.)

"In whatever language a statute may be framed, its purposes and its constitutional validity must be determined by its natural and reasonable effect." (Henderson *vs.* Wickhan, 92 U. S., 259.)

"All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of this character. The reason of the law, in such cases, should prevail over the letter." (United States *vs.* Kirby, 7 Wall., 482.)

Every technical rule as to the construction or force of particular terms must yield to the clear expression of the paramounted will of the legislature. (Wilkinson *vs.* Leland, 2 Pet., 627.)

Where the meaning of a statute is doubtful, the reason and purpose of the act may be considered. (Smythe *vs.* Fiske, 23 Wall., 374.)

The spirit as well as the letter of a statute must be respected; and where the whole context of the law demonstrates a particular intent in the legislature to effect a certain object, some degree of implication may be called in to aid the intent. (Durousseau *vs.* United States, 6 Cranch, 307.)

If diverse statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them. (United States *vs.* Freeman, 3 How., 556)

A remedial statute is to be liberally construed with reference to the purpose of its enactment. (Bechtel *vs.* United States, 101 U. S., 597.)

When a right has arisen on a contract or a transaction in the nature of a contract authorized by a statute, and has been so far perfected that nothing remains to be done by the party asserting it, the repeal of the statute does not affect it or an action for its imposition. (Pacific Mail Steamship Co. *vs.* Jolieffe, 2 Wall., 450.)

For the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discussed and considered.

1. What was the common law before the making of the act? 2. What was the mischief and defect for which the common law did not provide? 3. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth? 4. The true reason of the remedy. And then the office of all the judges is always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for the continuance of the mischief. (Heyden's case, 3 Co., 7; 1 Bl. Com., 61, 87.)

Proviso of the Act of August 4, 1886.

(24 Stat., c. 903, p. 307, sec. 8.)

Following the public construction of the statute of March 3, 1883, on February 17, 1884, on November 20, 1884, in his annual report to Congress, on page 20, the Postmaster-General reported to Congress that "Under the Act of Congress approved March 3, 1883, the aggregate additional amount found due to postmasters and ex-postmasters to the present time is $158,447.73."

On page 71 of that report is the following: "In addition to the the regular duty of the division (salary and allowance division) as hereinbefore stated, on April 7, 1884, under the order of the Postmaster-General, the work of reviewing and readjusting the salaries of postmasters at offices of the third, fourth and fifth classes, under the

Act of Congress, approved March 3, 1883, for the decade from July 1, 1864, to July 1, 1874, was assigned to it."

The following are extracts from the report of the Postmaster-General of November 26, 1887, from page 36 of that report:

"The readjustment of postmasters' salaries of the third, fourth and fifth classes of the Act of 1864 for the ten years ending June 30, 1874, as required by the Act of 1883, has been pushed with all the force of the department assignable to this duty. * * * The total number of claims already reviewed was 54,453, of which 21,573 have been allowed, and a total amount of such allowances is $1,000,966.66."

In the annual report of the Postmaster-General of November 28, 1888, on page 4, he reports the review of salaries under the Act of March 3, 1883, as numbering 68,725.

Thus it is officially shown that every readjustment of salary of a postmaster reported by the Postmaster-General was made under the Act of March 3, 1883.

What then is the purpose of the Postmaster-General in presenting to this Court to sustain his contention the proviso mentioned?

In Senate Executive Document, number 189, 49th Congress, first session, and on June 24, 1886, the Postmaster-General officially reported to Congress that the aggregate of readjustments of salaries under the Act of March 3, 1883, at that date was $603,952.03. This report was made one month and eleven days before the proviso of the Act of August 4, 1886, was enacted.

Manifestly the only authority that ever existed for these readjustments of postmasters' salaries was the statute of 1866 and the statute of March 3, 1883. The public construction of the statute of 1883 by the Postmaster-General on February 17, 1884, was, if warranted by law, binding on the Postmaster-General, and could neither be ignored nor set aside. It was neither revoked nor superseded by any subsequent different statement of the law by the Postmaster-General, of which there is any record.

And yet the Postmaster-General, in his letter to the Senate in response to a resolution of the Senate of June 18, 1886, in said Senate Document, number 189, makes use of the following most startling language:

"I respectfully beg leave to add that the interpretation of the Act of 1883 has been a subject of contention between this Department and a person claiming to represent as agent or attorney some postmasters who have made claims for additional compensation under that Act. This contention arose in 1883 under the administration of the Department by Postmaster-General Gresham. With the concurrence of the Attorney-General of the United States at that time, Postmaster-General Gresham determined that the duty of the Department was to make readjustments which, under the requirements of the Act of June 12, 1866, might, or should have been made from time to time, and in the same manner in which they were required to have been made under the Act of July 1, 1864,

Upon this theory the adjustments were made for which the two appropriations that have been disbursed were provided by Congress. It is contended, however, that the interpretation so given to the Act is not in accordance with its true intentions. If another construction shall be placed upon that Act by the courts, or by the Congress, the readjustments which have been made ARE NECESSARILY ERRONEOUS, AND THE AMOUNTS FOUND DUE UNDER THIS RULE OF CONSTRUCTION DO NOT CORRECTLY EXPRESS THE OBLIGATIONS OF THE UNITED STATES, NOR ARE THEY AWARDED TO THE PROPER PERSONS, IN VERY MANY INSTANCES AT LEAST." * * *

The construction of the statute of 1883 attributed to Postmaster-General Gresham is refuted absolutely by the record of his construction on pages 10, 11 and 12 of the record of this case.

And the construction attributed to the Attorney-General is refuted absolutely by the text of his construction which appears in Senate Ex. Doc., number 110, 48th Congress, first session.

It thus appears very plainly that the proviso of section 8 of the statute of August 4, 1886, was obtained by impressing upon Congress that there was a contention in regard to the official construction of the law by Postmaster-General Gresham, which appears as Exhibit A in Senate Ex. Doc. 146, 49th Congress, first session.

The only contention that ever existed as to this official construction of the law was the insistence of the attorney for the postmasters that deficiencies in salaries should not only be paid where the eight returns of the term showed the deficiencies in pay for the whole term, but should also be paid to the postmasters at offices newly established during a biennial term, where only a part of the eight returns of a whole term existed. This contention for the postmasters, as to those not covered by the public construction of the law by General Gresham, was settled adversely by this Court in 124 U. S.

To invoke here, in support of the contention, the proviso of section 8 of the Act of August 4, 1886, under the conditions shown, discloses grave doubts as to whether that contention finds support in the assumed nullification of the remedial statute of June 12, 1866, section 8, by the concurrent action of the Executive of the Department and the Courts, and in the assumed subversion of the statute of March 3, 1883, by the payment of bounties to certain postmasters, in avoidance of the payment of deficiencies in the salaries of other postmasters, this upon the ground that the legislature in the statute of 1883 put into that statute the provision affirming the dates of readjustment ordered to be properly as of the dates immediately following the expiration of the terms in which the deficiencies of salaries appeared.

This effort to have the proviso of section 8 of the statute of 1886 determine the intent of the unrepealed statute of 1883, is made with the knowledge that the courts have never abdicated the exercise of judicial functions to the Legislature, but have always proceeded to the judicial determination of the meaning of contracts

whenever such cases were brought before them and which were within their jurisdiction.

In considering a statute such as this, courts carry as far as may be an intendment that it does not propose to interfere with operations of the judicial power, it being of course only that sort of power which can decide *in invitum* upon the meaning of any *existing contract*, including therein such contemporary remedial statutes as by constitutional principles make part of it.

It is submitted, therefore, that the statute of 1886 does not mean that upon an application *to a court* which at the time of the enactment of the statute of 1883 was a due constitutional method for procuring a declaration of its meaning, that court should be bound by the interpretation therein given to the Act of 1883; but only that in the absence of such a judicial declaration, and to quiet whatever apprehensions the officers engaged in administering the statute might have, either of public or private responsibility, Congress would adopt their construction for the future as well as past, and would give them whatever advantage there might be in a statutory declaration of personal immunity from any existing liability in that connection to private suit. The general words "disallow," "bar," etc., constitute a provisional, *ad interim* rule as to the meaning of a contract, given by the *legislature* to the *executive* until the *judiciary* could be heard from. Incidentally, thereby, the defendant would be rid of the importunities of such applicants as denied the propriety of its rule of action, and these would be referred to the *courts* for any final determination that might be desired.

By general laws the United States acknowledges complete liability upon its contracts as the same by judicial methods of interpretation may be defined—it repudiates neither its obligations nor its liability to ordinary remedies thereupon.

The above special statute, therefore, will not be construed as a departure from this wise policy. It does not forbid remedies otherwise competent against the United States upon the claims in question.

The Action of the Postmaster-General Tested by Law.

Where the law requires a misisterial act to be done by a public officer, and he neglects or refuses to do such act, he is liable in damages to the party injured. Mistake or honest intention will not excuse him. (Amy *vs.* Barkholder (Amy *vs.* The Supervisors), 11 Wall., 136; South *vs.* Maryland, 18 How. 396.)

An officer cannot be said to have acted under color of a law which gave neither him nor any other person authority to do the act in question. (United States *vs.* Tweed ("Tweed's Case"), 16 Wall., 554.)

"There is a clear distinction between actions to compel the officers of a State, by affirmative official action, to perform an obligation of the State, and actions against defendants who, while

claiming to act as officers of the State, violate and *invade* the personal and property *rights of individuals, under cover of authority* which is unconstitutional and void. In the latter case they are not sued as or because they are officers of the government, *but as individuals;* and the court is not ousted of jurisdiction because they assert authority as such officers. To make out their defence, they must show that their authority was sufficient in law to protect them." (Hagood *vs.* Southern, 117 U. S., 52; Poindexter *vs.* Greenhow, 114 U. S., 270.)

The duty laid upon the Postmaster-General by the statute of March 3, 1883, as publicly defined by him on February 17, 1884, is manifestly purely a ministerial duty because as defined it simply requires him to ascertain and report from the registered returns of postmasters the excess of commissions in biennial terms over the paid salaries.

By his own report of the law, if it be without error, he is liable in suits for damages in all such cases which he has failed to report where applications were made within the time limited by law.

But in this Court the contention of the Postmaster-General is that the law requires the payment of the excesses of the commissions in terms of postmasters over the paid salaries of postmasters in the succeeding terms. If this contention is justified by law, it also describes duties purely ministerial, and in all such cases where the postmasters applied and the Postmaster-General has failed or refused to report the same he as an individual is liable in damages for his failure to perform such ministerial duties.

Upon the law the decision of this controversy is as important to the Postmaster-General as an individual, as it is to the United States or to the postmasters whose accounts are denied payment.

As to Retrospective Readjustments.

Commenting under this head upon the construction put by this Court upon the statute of March 3, 1883, in 124 U. S., pp. 86–97, in the words following, viz: "Acting upon this suggestion, and under the Act of Congress of March 3, 1883, which authorized and directed the Postmaster-General in proper cases to make readjustments of salaries, which should act retrospectively, Mr. McLean made," etc., and upon a paragraph of the decision of this Court in 164 U. S., p. 213, which reads as follows: "It was not till 1883 that the Postmaster-General was authorized to readjust the compensation of postmasters and to make such readjustments retrospective," the brief for the Government on page 18 proceeds to remark: "It is incredible that this Court should have rendered so important a decision as the establishment of a new rule for the readjustment of salaries of postmasters, without having the question in any sense before the Court, without any decision of the question by counsel for either side, without any analysis by the Court, and within the limits of a brief paragraph.

"Whilst this question has never before been squarely before this Court, it was incidentally raised in the case of McLean *vs.* Vilas (supra), and so far as any intimation at all was given therein it was in approbation of the rule of readjustment which has heretofore obtained in the Post Office Department."

These comments disclose fatal errors as to the meaning and intent of the statute of July 1, 1864, and the later statute of March 3, 1883. The action devolved upon the Postmaster-General as duties by the statute of July 1, 1864, cannot be substituted for the action devolved upon him as duties by the statute of March 3, 1883, nor can the action devolved upon him as duties by the statute of March 3,1883, be substituted for the action which was put upon him as duties by the Act of 1864. The acts required by these statutes are separate and distinct, and wholly independent, the one class of duties from the other class of duties. The acts called readjustments of postmasters' salaries in the statute of July 1, 1864, are acts which can have effect only *prospectively*, because each readjustment, so-called, fixed a salary for a term in the future at the date thereof. The readjustments of salaries prescribed by the statute of March 3, 1883, can have effect *retrospectively only*, because they fix salaries by increase of paid salaries in past terms of service, only in those cases where such increase is required because the paid salaries are 10 per cent. or more less than the standard of the increase embodied in the law. In other words, the statute of March 3, 1883, is solely a *retrospective* statute, and being so this determines absolutely the effect to be given to it. It is impossible to describe acts of the Postmaster-General provided for by the statute of 1864 and not describe acts which can take effect only for terms in the future at the date thereof, and it is equally impossible to describe acts of the Postmaster-General provided for by the statute of March 3, 1883, and not describe acts which can only take effect retrospectively. To substitute the action provided for by the statute of 1883 for the action provided for by the statute of July 1, 1864, would render nugatory the statute of 1864, and to substitute the action provided for by the statute of 1864 for the action provided for by the statute of 1883, would render null and void the latter act. In the effort to render the statute of March 3, 1883, null and void by this method, the strange spectacle is presented of creating ficticious debts of more than $2,000,000. This has been accomplished by the false assumption that the statute of July 1, 1864, in cases of decreasing receipts required the Postmaster-General when he assigned salaries at the beginning of terms on the basis of the commissions of the preceding term to continue the salaries so assigned during the whole of the ensuing term, whereas the second section of the statute of 1864 made it the great duty of the Postmaster-General to so control the assigned salaries as to prevent the over-payment of the postmasters in such cases. The determination of the Executive of the Post Office Department to defeat the statute of 1883 has been so energetic that all the power and means at command have been used to create, by abrogating

the acts of the Postmaster-General in discharging great duties years ago, fictitious debts for payment aggregating more than $2,000,000.

The contention here is to have a determination made that these fictitious debts are due and payable under the statute of 1883.

It would indeed be strange if any decisions of this Court could be found in support of this contention.

Plainly a law which orders in terms a retrospective readjustment and increase of salaries of postmasters cannot be avoided by the invocation of an obsolete statute, which during its life time provided solely for the assignment and reassignment of salaries at post offices to have effect only for future terms, terminable by a succeeding assignment by a similar method by the Postmaster-General.

Such is the anomolous result of the attempt to transform the rule of action imposed by the statute of 1864, to make opportune assignments of salaries at post offices for future terms only, into the rule of action imposed by the statute of 1883 to make changes in the salaries of postmasters in past terms only for the sole reason that the application of the rule of the statute of 1864 caused them to lose 10 per cent. or more of their earnings.

Conclusion.

This suit as a test case is to enforce, on behalf of a multitude of old-time postmasters, the payment of debts "voluntarily created by the Government" (Verdier's case) for services performed by them years ago.

The account of the debt due in the case before the Court is stated in complete conformity to the terms of the law by which it was "voluntarily created by the Government," and in complete conformity to the rule and requirement of that law as determined by and given to the public by the Postmaster-General himself.

The judgment of the Court of Claims in favor of the appellee for these reasons ought to be affirmed here.

WASHINGTON, D. C.,
October 26, 1901.

HARVEY SPALDING,
Attorney for Appellee.

APPENDIX A.

Letter to the Postmaster-General.

"WASHINGTON, D. C., *May 23, '98.*

"Hon. CHARLES EMORY SMITH,
"*Postmaster-General.*

"SIR:

"On the 3d inst. I addressed to you a communication asking your personal consideration of the recorded action of the Postmaster-General in the execution of the postmasters' readjustment salary act of March 3, 1883.

"The sole criterion in the body of that statute is a command addressed to the Postmaster-General requiring him to readjust the salaries of all applicant postmasters of the classes named in that act whose returns show the paid salary to be 10% less than the commissions prescribed by the Act of 1854.

"I furnished you with a transcript of the recorded text of every published construction of that statute by the Postmaster-General, in each of which it is affirmed by the Postmaster-General that every such postmaster by biennial readjustment by the Postmaster-General s entitled to be paid the difference between the salary actually paid him and what he would have received in commissions under the Act of 1854 had the salary act of 1864 not been enacted.

"I also called your attention to the anomalous fact that in every case reported for payment the Postmaster-General reversed every public construction of the law by him made and the sole criterion contained in the body of the statute commanding the Postmaster-General to make the readjustments of salaries specified. This reversal was accomplished by disregarding in every instance the fact as to whether there was any deficiency between the salary paid in any term and what the postmaster would have received in commissions under the Act of 1854 by arbitrarily assigning a salary in any biennial term not upon the basis of the returns made in that term, but upon the basis of the commissions of the postmaster in the prior term. This action denied every payment of every deficiency described in the statute and described in the body of the statute and accorded a payment in any term in excess of the commissions in that term so as to equal the commissions in the prior term if the commissions in that prior term exceeded the commissions in the succeeding terms. This action for years in contravention of the recorded construction of the law and in reversal thereof has been affirmed to be the law by your predecessors and the accounts have been suppressed in aid of making such action the *de facto* law controlling these cases. If this action be law it is plain that in regard to every application made prior to Jan. 1, 1887, payments must be made in execution of the *de facto* law in every case where such payments

have not been made. A large number of such cases have not been paid, payments having been prevented by the non-report of such cases by the Postmaster-General in accordance with what he now affirms and has for years affirmed the law to be.

"On the 3d inst., with the communication then made to you, I submitted a small schedule of such cases in the State of New York and also a small schedule in the State of Ohio.

"I now submit for your personal consideration a small schedule of such cases in the State of Illinois, and I respectfully request your personal action thereon. There certainly can be no good or sufficient reason for suppressing the report of debts due postmasters stated by a rule which the Postmaster-General himself affirms to be the law.

"I ask your personal consideration of cases in this schedule illustrating the rule which the Postmaster-General affirms to be the law and which illustrates the fact that while one postmaster has been paid by this rule another at the same post office, making application within the time of the law, has been denied payment. And this unjust action applies to every case which I submit for your consideration.

"Your personal consideration is invoked to the following cases included in this list:

"Bushnell, Ill. The claim of David M. Wyckhoff was presented in 1883, and of George C. McFarland on August 3, 1886, and of W. H. Heaton in 1883. W. H. Heaton was allowed on January 29, 1885, $335.10 for his services from November 1, 1866, to June 30, 1868. This salary was stated on the returns of the office between July 1, 1864, and June 30, 1866, by which the salary for two years, between July 1, 1866, and June 30, 1868, was shown to be $1,406.12 instead of $980 which had been paid, and this entitled the applicant postmasters (by the Department Rule) to $426.12 additional salary. As Heaton served from November 1, 1866, to June 30, 1868, the proportion of this $426.12, namely $355.10, was paid him. The remainder, $71.02, belonged to Wyckhoff and McFarland, who served between July 1, 1866, and October 31, 1866, and has never been paid. By what rule of justice can one postmaster be accorded pay of his readjusted salary in a biennial term and another who made application under the same law be denied payment of his readjusted salary?

"Camp Point, Ill. James Robertson applied for readjustment of his salary in July, 1884, and E. E. B. Sawyer applied on October 12, 1884. By the Department Rule the salary between July 1, 1866, and June 30, 1868, was readjusted upon the returns between July 1, 1864, and June 30, 1866, and was then found to be $1,134.06, which was $234.06 more than the salary of $900, previously paid. Mr. Sawyer has been paid $39.01, the part of $234.06 due him for his service between July 1, 1866, and October 31, 1866. The $195.05 due Jas. Robertson for his service between November 1, 1866, and June 30, 1868, has not been paid. It can-

not be that it is designedly intended to perpetrate such a high-handed outrage as it would be to accord payment to one postmaster and deny it to another, both of whom served in the same term and applied under the same law for readjustment of their salary.

"Freedom, Ill. The salary of Robert Wright and S. W. Lawrey, who applied, has been stated by the Department Rule between July 1, 1866, and June 30, 1868, at $107.60 more than was originally paid, and Mr. Lawrey's share for his one-quarter's service from April 1, 1868, to June 30, 1868, of $13.45, has also been paid, but Mr. Wright's share of the same for his services from January 1, 1867, to April 1, 1868, five quarters of $67.25 has not been paid.

"Grand Chain, Ill. George W. Bristow applied in July, 1884, and David Porter in September, 1886. By the Department Rule the salary between July 1, 1866, and June 30, 1868, is stated at $91.92, which is $83.92 increase of the salary of $8 paid for two years. Mr. Porter has received his share of $20.98 of this due him for his service from July 1, 1866, to December 31, 1866, but Mr. Bristow has received no part of his share of $62.94 due him for his service between January 1, 1867, and June 30, 1868.

"La Harpe, Ill. E. Z. Hill and William O. Coquilette applied for readjustment of their salaries, and the salary by the Department Rule between July 1, 1870, and June 30, 1872, was stated at $963.30, which is $103.30 more than the salary of $860 originally paid. Of this $103.30, $51.65 has been paid to E. Z. Hill as the share due him from July 1, 1871, to June 30, 1872, but the share of $51.65 due William C. Coquilette for his services between July 1, 1870, and June 30, 1871, has not been paid.

"Lodi Station, Ill. Solomon White made application on October 27, 1886, and E. Brown on April 7, 1886. The salary was stated by the Department Rule between July 1, 1868, and June 30, 1870, at $545.44, which is $145.44 more than the salary of $400 orginally paid. The share of $72.72 due E. Brown for his service between July 1, 1868, and June 30, 1869, has been paid, but $72.72, the share due Solomon white for his services between July 1, 1869, and June 30, 1870, has not been paid.

"Logan, Ill. Elias Pritchard made application July 2, 1886. By the Department Rule the salary between July 1, 1870, and June 30, 1872, has been stated at $78.80, which is $40.80 more than the salary of $38 originally paid; $25.50 of this due Harvey H. Adams has been paid, but the share of $15.30 due Elias Pritchard for his service between July 1, 1866, and July 1, 1867, has not been paid.

"Martinsville, Ill. H. C. Howell, Newman and Curtis applied before January 1, 1887, and the salary by the Department Rule was stated at $520, between July 1, 1866, and June 30, 1868, which is about $140 more than the salary originally paid of $380. The share of $70 due Newman and Curtis for the time between July 1, 1867, and June 30, 1868, has been paid, but the share of $70 due

Howell for the time between July 1, 1866, and July 1, 1867, has not been paid.

"Pecatonica, Ill. Frederick Brown and Thos. Hance applied for readjustment of salary prior to January 1, 1887, and the salary by the Department Rule was stated for the term between July 1, 1866, and June 30, 1868, at $1,519.07, which is $539.07 more than the salary of $980 originally paid. Of this $404.30, the share due Mr. Brown for his services between January 1, 1867, and June 30, 1868, has been paid and $27.83, the share due Thos. Hance for his service between November 24, 1866, and December 31, 1886, has been paid, but $106.94, the share due Mr. Brown for his service between July 1, 1866, and November 24, 1866, *has not been paid.*

"Pekin, Ill. Hezekiah Naylor and George Naylor presented applications in 1884 and the salary by the Department Rule was stated between July 1, 1866, and June 30, 1868, at $4,274.27, which is $474.27 more than the salary of $3,900 originally paid; $84.92 of this due Hezekiah Naylor for his services between July 1, 1866, and November 8, 1866, has been paid; $284.70, the share of this due George Naylor for his services between April 19, 1867, and June 30, 1868, *has not been paid.*

"Prairie City, Ill. James H. Wilson and Alonzo Barnes applied for readjustment of salary, one on December 9, 1884, and the other December 20, 1886. The salary between July 1, 1866, and July 1, 1868, was stated by the Department Rule at $1,456.92, which is $136.92 more than the salary of $320, originally paid; $68.46, the share due James H. Wilson for his services between July 1, 1867, and July 1, 1868, has been paid, but $55.19, the share due Alonzo Barnes for his services between July 1, 1866, and April 20, 1867, has not been paid, and $13.27, the share due J. H. Wilson for his service between April 21, 1867, and June 30, 1867, has not been paid.

"Rock Grove, Ill. A. W. Kaup applied for readjustment of his salary in 1883, and W. M. Rockey in September, 1884. The salary was stated by the Department Rule between July 1, 1866, and June 30, 1868 at $266.30, which is $68.30 more than the salary originally paid of $198; $25.61, the share of this due W. M. Rockey for his service between July 1, 1866, and March 31, 1867, has been paid, but $42.68, the share due A. W. Kaup for his services between April 1, 1867, and June 30, 1868, *has not been paid.*

"Roscoe, Ill. Caleb C. Vance applied for readjustment of salary on January 28, 1886, and A. D. Lawrence in 1884. The salary between July 1, 1866, and June 30, 1868, was stated by the Department Rule at $610.25, which is $150.25 more than the salary of $460 originally paid; $29.97 of this, the share due A. D. Lawrence for his service between July 1, 1866, and November 23, 1866, has been paid; $120.28, the share due C. C. Vance for his service between November 24, 1866, and June 30, 1868, *has not been paid.*

"Vandalia, Ill. Henry C. Fallin applied for readjustment of salary in 1883 and Hector S. Humphrey in the same year. The salary between July 1, 1868, and June 30, 1870, was stated by the

Department Rule at $2,201.44, which is $201.44 more than the salary of $2,000 originally paid; $109.11 of this, the share due Hector S. Humphrey for his service between June 1, 1869, and June 30, 1870, has been paid; $92.33, the share due Henry C. Fallin for his service between July 1, 1868, and May 31, 1869, *has not been paid.*

"Vermont, Ill. W. J. Johnson applied for readjustment of salary on October 26, 1886, and H. Kirkbride in 1884. The salary was stated by the Department Rule between July 1, 1866, and June 30, 1868, at $944.57, which is $544.57 more than the salary of $400 originally paid; $394.97, the share of this due Mr. Kirkbride, has been paid; $149.60, the share due W. J. Johnson, has not been paid.

"J. H. Evans and J. T. Hunter also applied and their salaries with Kirkbride's, by the Department Rule has been stated, between July 1, 1868, and June 30, 1870, at about $858, which is $258 more than the salary of $600 originally paid, no part of which has been paid.

"Virden, Ill. Jno. J. Beattie and R. H. Ballenger applied for readjustment of salary in October, 1884. The salary between July 1, 1868, and June 30, 1870, by the Department Rule was stated at $2,396.82, which is $516.82 more than the salary of $1,880 originally paid; $318.59 of this, the share due R. H. Ballinger for his service between April 6, 1869, and June 30, 1870, has been paid, but $198.23, the share due Jno. J. Beattie for his service between July 1, 1868, and April 6, 1869, has not been paid.

"By the cases cited I have shown you the undeniable fact that a large number of postmasters who applied for readjustment of their salaries under the Act of 1883 within the time limited by law have not been paid the salaries due them, stated by a rule which the Department affirms to be the law, and by which rule of statement an aggregate of $1,221,000 have been paid to other postmasters having precisely the same rights and no greater rights than the postmasters whose cases I have brought by citation to your personal consideration.

"Plainly these postmasters are entitled to be paid the salaries stated by the Department Rule if that rule be law as it is affirmed to be in a great number of circulars issued lately and distributed to Members of Congress.

"I have received no reply to the appeal made to you on the 3d inst. in respect to other cited cases of the same class. The Department for a term of years under the administration of your learned and able predecessors has by some unknown rule or policy seen fit to accord certain rights under a certain statute to a large number of postmasters, while at the same time the same rights under the same statute have been persistently ignored as to other postmasters.

"It certainly must be sufficient to secure an equal administration of the law without discrimination and without favoritism to

bring this conspicuous wrong to your personal attention and consideration.

"It will be manifest to you if you read the statute of 1883 that when Congress *directed* the readjustment and payment of salaries to those postmasters whose returns showed a paid salary 10 per cent. less than the commissions prescribed by the Act of 1854 no responsive obedient action of the Postmaster-General was possible but to *report back* to the Congress every deficiency in salary described in the statute where the readjustment was applied for by the postmasters within the time limited by law. This manifest truth was recognized and affirmed in the text of every construction of the law given to the public by your predecessors. Consequently no act of the Postmaster-General could have effect under the law which did not present to the Congress in each account considered the precise amount of compensation the postmaster would receive as commissions under the Act of 1854 and the precise amount of the pay the postmaster actually received under the Act of 1864. The Postmaster-General had no power under the statute to ascertain or state from the Department records for the information of the Congress any debt or any credit side of any account except the debt and credit side described in the statute. If in any account any other debt or credit has been stated to control the action of Congress such debt and credit sides so stated have not only been without warrant of law but in reversal of the plain mathematical terms of the statute of 1883.

"Can a greater responsibility of an executive officer be conceived than to state accounts to control the action of Congress so that accounts without warrant of law shall be paid and so that accounts commanded to be paid by the Congress shall not be paid.

"Can anything be plainer than this that every account stated by the Postmaster-General exhibiting the amount of salary of the postmaster by the commissions prescribed by the Act of 1854 and exhibiting a paid salary by the Act of 1864 10 per cent. or more less would be promptly paid by Congress if reported? And can anything be plainer than this that no account of a postmaster stated by the Postmaster-General and submitted to Congress exhibiting the paid salary under the Act of 1864 in excess of the salary stated under the Act of 1854 could by no possibility receive from Congress any increased payment? And yet hundreds of thousands of dollars have been secured from Congress upon such accounts by concealing from the Congress the controlling fact that the original salaries paid under the Act of 1864 were equal to or in excess of the salary stated on the basis of the Act of 1854. And this has been done in the face of the recorded accounts in your office showing these facts.

"If they have not been destroyed there are complete schedules on file in your office showing the exact debts unpaid because not reported to the Congress of Postmasters who applied for readjust-

ment of salaries prior to January 1, 1887, in the States of Alabama, Arkansas, Kansas, Kentucky and Illinois.

"Your personal consideration is invited to a copy of correspondence upon this point as follows:

"'WASHINGTON, D. C., *Feb. 8, 1897.*

'A. H. SCOTT, ESQ.,

'Dear Sir:

'A search has been inprogress for a time for the Alabama, Arkansas, Kansas, Kentucky and Illinois schedules of readjusted salaries of Postmasters stated retrospectively in accordance with the decisions of the Supreme Court.

'Do you mind stating to me or to the proper Department Officer the place where these papers were deposited when you left office?

'Respectfully,

'HARVEY SPALDING,'

'1320 F St., N. W., WASHINGTON, D. C.,

'*February 9, 1897.*

'HARVEY SPALDING, ESQ.,

'Washington, D. C.

'Dear Sir:

'Your letter of the 8th inst. received. I am sorry I cannot give you any information on the subject of the schedules to which you refer. Perhaps Mr. Kimball can. They were on 'file' when I retired, but I cannot tell where the 'reform' files have placed them.

'Respectfully,

'ALBERT H. SCOTT.'"

"I have thus brought to your personal knowledge the anomalous fact that the compensation accounts of postmasters stated as required by the statute of 1883 have been deliberately suppressed and heretofore withheld from Congress for the manifest purpose of defeating the payments of such accounts by the Congress provided for by the statute of March 3, 1883.

"I should fail in the discharge of a supreme obligation I owe to these postmasters and the law-making power as well not to make an earnest appeal to you to report to Congress every salary account of every postmaster who applied within the time limited by law stated in conformity to law.

HARVEY SPALDING."